

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NICOLAS GOUREAU and STEPHANIE MENKIN, :  
individually and derivatively on behalf of :  
GOOBERRY CORP., a New York corporation, :  
: Plaintiffs, : Case No. 1:20-cv-04691-MKV  
: :  
- against - :  
: :  
MARCUS LEMONIS, an individual, ML RETAIL, :  
LLC, a Delaware limited liability company, :  
MARCUS LEMONIS, LLC, a Delaware limited :  
liability company, and MACHETE CORPORATION :  
d/b/a MACHETE PRODUCTIONS, a California :  
corporation, :  
: Defendants, :  
: and :  
: GOOBERRY CORP., a New York corporation, :  
: Nominal Defendant. :  
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**NOTICE OF MOTION TO DISMISS**

PLEASE TAKE NOTICE THAT, upon the accompanying Declaration of Michael D. Wexler, executed on October 23, 2020, together with the exhibits thereto; and the accompanying Memorandum of Law in Support of Motion to Dismiss; and upon all of the papers and proceedings herein, Defendants Marcus Lemonis (“Lemonis”), ML Retail, LLC (“ML Retail”), and Marcus Lemonis, LLC (collectively, the “ML Defendants”) will move this Court on a date and time to be set by the Court, before the Honorable Mary Kay Vyskocil, United States District Judge, at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 18C, New York, New York 10007, for an Order, pursuant to Fed. R. Civ. P.

12(b)(6), dismissing with prejudice the Complaint of Plaintiffs Nicolas Goureau (“Goureau”) and Stephanie Menkin (“Meknin”) (collectively, “Plaintiffs”) as against the ML Defendants, and granting such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE THAT, in accordance with the Court’s Scheduling Order, dated October 1, 2020 (Dkt. No. 35), Plaintiffs’ papers in opposition to the ML Defendants’ motion, if any, must be filed with the Court on or before November 20, 2020, and the ML Defendant’s reply papers, if any, must be filed with the Court on or before December 11, 2020.

Dated: October 23, 2020

Respectfully submitted,  
SEYFARTH SHAW LLP

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